

In re Patent Application of:  
**MCCARTHY ET AL.**  
Serial No. **10/779,402**  
Filed: **FEBRUARY 13, 2004**

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#### **REMARKS**

The Examiner is thanked for the thorough examination of the present application. In view of the arguments presented in detail below, it is submitted that all claims are patentable.

#### **I. The Claimed Invention**

The invention, as recited in independent Claim 1, for example, is directed to a communications system that includes a plurality of servers connected together in a network for processing a plurality of different job types having respective different resource usage characteristics associated therewith. Each server determines its own respective health metric based upon at least one job being processed thereby and weighs the health metric based upon the respective resource usage characteristic of the at least one job. The communications system includes a dispatcher for collecting the weighted health metrics from the servers and distributing jobs to the servers based thereon.

Independent Claim 9 is directed to a load distributor for a plurality of servers. Independent Claim 14 is directed to a job distribution method for a plurality of servers, and independent Claim 17 is directed to a corresponding computer readable medium.

#### **II. The Claims Are Patentable**

The Examiner rejected independent Claims 1, 9, 14, and

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17 over the Albert et al. patent. It is respectfully submitted that Albert et al. does not disclose all of the elements of the claimed invention.

Albert et al. is directed to a system and method for selecting a server to handle a connection. The method includes receiving at a service manager a connection request intercepted by a network device having a forwarding agent that is operative to receive instructions from a service manager, the connection request having been forwarded from the forwarding agent on the network device to the service manager. A preferred server is selected at the service manager from among a group of available servers. The preferred server is the server that is to service the connection request. Instructions are sent from the service manager to the forwarding agent. The instructions include the preferred server that is to service the connection request so that the connection request may be forwarded from the network device to the preferred server. The service manager can be further configured to receive feedback messages, from the servers, that express the level of load on the server.

Albert et al. fails to recite each server determining a respective health metric thereof based upon at least one job being processed thereby and weighting the health metric based upon the respective resource usage characteristic of the at least one job. In sharp contrast, the feedback messages of Albert et al. express the level of load on the server as a whole, and are weighted based upon how much processing capacity the server has remaining. Indeed, in support of this argument, one need look no

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further than the very portion of Albert et al. cited by the examiner. Col 30, lines 4-8, recites:

In one embodiment, the feedback message includes a weight that expresses how much processing capacity or bandwidth the server has to handle connections for certain applications that correspond to certain virtual IP addresses.

The health metric of the claimed invention is weighted based upon the respective resource usage characteristic of the at least one job, whereas the feedback messages of Albert et al. are weighted based upon the processing capacity the server has remaining. Thus, Albert et al. fails to disclose each server determining a respective health metric thereof based upon at least one job being processed thereby and weighting the health metric based upon the respective resource usage characteristic of the at least one job.

Furthermore, Albert et al. fails to disclose a dispatcher for collecting the weighted health metrics from the server and distributing jobs to the servers based thereon. Differently, Albert et al. teaches a service manager that receives feedback messages. The service manager then instructs a forwarding agent to allocate jobs to servers based upon those feedback messages. As explained above, the feedback messages of Albert et al. are weighted based upon the remaining processing capacity of the server whereas the health metric of the claimed invention is weighted based upon the respective resource usage characteristic of the at least one job. Therefore, the feedback messages of Albert et al. do not correlate to the health metrics

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of the claimed invention, and thus Albert et al. fails to disclose a dispatcher for collecting the weighted health metrics from the server and distributing jobs to the servers based thereon because Albert et al. does not teach health metrics.

Accordingly, Albert et al. fails to disclose all of the elements of independent Claims 1, 9, 14, and 17, which are therefore patentable. Their respective dependent claims, which recite yet further distinguishing features, are likewise patentable and require no further discussion herein.

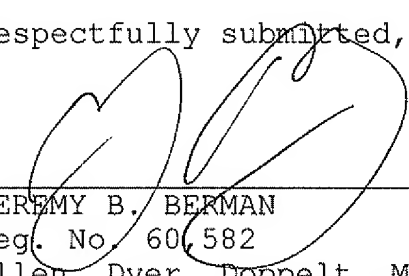
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**CONCLUSION**

In view of the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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